

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DARNELL WATKINS,

Petitioner,

v.

Case No. 09-cv-14990

Paul D. Borman
United States District Judge

Paul J. Komives
United States Magistrate Judge

LINDA TRIBLEY,

Respondent.

OPINION AND ORDER

(1) OVERRULING THE PETITIONER’S OBJECTIONS TO THE MAGISTRATE JUDGE’S
REPORT AND RECOMMENDATION,

(2) ADOPTING THE MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION,

(3) DENYING PETITIONER’S APPLICATION FOR THE WRIT OF HABEAS CORPUS;

AND

(4) DENYING A CERTIFICATE APPEALABILITY

This matter is before the Court on Petitioner’s Objections to the Magistrate Judge’s Report and Recommendation. (Dkt. No. 16.) For the reasons that follow, the Court OVERRULES Petitioner’s Objections, ADOPTS the Report and Recommendation (Dkt. No. 13), DENIES Petitioner’s Application for the Writ of Habeas Corpus (Dkt. No. 1) and DENIES a Certificate of Appealability.

The Court reviews *de novo* those portions of the Report and Recommendation to which a specific objection has been filed. *See* 28 U.S.C. § 636(b)(1). A district “court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” *Id.*

A general objection, or one that merely restates the arguments previously presented, does not sufficiently identify alleged errors on the part of the magistrate judge. An “objection” that does nothing more than disagree with a magistrate judge's conclusion, or simply summarizes what has been argued before, is not considered a valid objection. *Howard v. Sec'y of Health and Human Servs.*, 932 F.2d 505, 508 (6th Cir.1991).

Petitioner's conviction, following a bench trial, arises from his flight from police, during which officers observed him discarding a bag containing controlled substances. The Magistrate Judge recommends that the habeas petition be denied and that the Court further deny a certificate of appealability. Defendant has filed timely objections.

Although Petitioner's objections, properly considered, fall into the category of a general objection that does nothing more than disagree with the conclusions reached by Magistrate Judge Komives and summarize positions that were argued before, the Court notes that Petitioner has loosely identified the following in his objections: (1) “the testimony of the police officers being in question;” (2) “the unobtainable results of the polygraph examination;” (3) “the lack of videotape of the ensuing chase;” and (4) “the destruction of fingerprint evidence.” (Def.'s Objs. 2.)

Having reviewed the Magistrate Judge's Report and Recommendation, and Petitioner's Objections, and the record in this matter, the Court agrees with Magistrate Judge Komives' recommendation, including his conclusions that: (1) the credibility of witnesses is a matter left to the determination of the fact finder and is not a proper basis on which to seek habeas relief; (2) the trial court's decision not to admit the results of the polygraph exam, which are *per se* excluded under Michigan law, does not infringe the Petitioner's right to present a defense; (3) nothing in the evidence suggests that a video of the chase, let alone an exculpatory video of the chase, was ever

recorded; and (4) petitioner failed to demonstrate that any failure to preserve fingerprint evidence was in bad faith or that any such evidence, if it did exist, would have been exculpatory.

The Court, having reviewed the Report and Recommendation and Petitioner's Objections, and having reviewed *de novo* the record in this matter, and having determined, for the reasons stated by the Magistrate Judge in his Report and Recommendation, that Petitioner's habeas petition should be denied, the Court OVERRULES Defendant's Objections, ADOPTS the Report and Recommendation, DENIES the habeas petition and DISMISSES this habeas proceeding. The Court further DENIES, for the reasons stated by the Magistrate Judge in his Report and Recommendation, a certificate of appealability.

IT IS SO ORDERED.

s/Paul D. Borman
PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

Dated: September 26, 2011

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record by electronic means or U.S. Mail on September 26, 2011.

s/Denise Goodine
Case Manager